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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

MELLER, MICHAEL V

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 04/23/2002

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/873,654

Applicant(s)

KISS, ZOLTAN

Examiner

Michael V. Meller

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 6 and 11-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group I, claims 1-10 in Paper No. 5 is acknowledged. The election of growth factor as a species is also noted. Thus, the claims to be examined, as noted by applicant, are 1-5 and 7-10.

Claims 6 and 11-26 are withdrawn from further consideration as being drawn to non-elected subject matter.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Starkweather.

The reference teaches a placental alkaline phosphatase in a buffer solution with agar, see entire reference, especially the examples. Also note that according to Altruism Biomedical Network that Growth Factors are found in serum, thus the serum of Starkweather would inherently have a growth factor in it since it contains a serum.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Starkweather taken with Atruis Biomedical Network (Atruis).

The teachings of Starkweather are above.

It does not teach the specific growth factor.

Atruis teaches that growth factors such as IGF-I are well known in the art and are similar to insulin, see entire reference.

It would have been obvious to one of ordinary skill in the art to use IGF-I as the specific growth factor since it would have been merely a choice of the artisan in an effort to optimize the results to use IGF-I. IGF-I, insulin and the like are well known growth factors (see Atruis) , to use them is simply a choice by the artisan.

The adjustment of particular conventional working conditions (e.g., determining result effective amounts of the enzyme, especially within the broad ranges instantly claimed) is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

Accordingly, this type of modification would have been well within the purview of the skilled artisan and no more than an effort to optimize results.

Claims 1-5 and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eckert et al. in view of Starkweather and Atruis Biomedical Network (Atruis).

Eckert teaches a bandage containing buffer, alkaline phosphatase and agarose and a bandage containing human epidermal growth factor, alkaline phosphatase and agarose, see examples 1 and 2.

It does not teach the specific growth factor and serum.

The teachings of Starkweather and Atruis are above.

It would have been obvious for one of ordinary skill in the art to use the specific growth factor for the above reasons and to use serum since Atruis makes it clear that growth factors are in serum. Starkweather teaches that alkaline phosphatases from placenta are commonly used making the use of such enzymes merely a choice of the artisan.

The adjustment of particular conventional working conditions (e.g., determining result effective amounts of the enzyme, especially within the broad ranges instantly claimed) is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

Accordingly, this type of modification would have been well within the purview of the skilled artisan and no more than an effort to optimize results.

Claims 1-5 and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nickoloff et al. or Appere et al. taken with Eckert et al. or Starkweather and further in view of Atruis Biomedical Network (Atruis).

Nickoloff (see col. 8, line 38-col. 9, line 11) and Appere (see example 5) each teach that a buffer serum, alkaline phosphatase and a growth factor are in a composition.

The teachings of the other references are above.

They do not teach the specific growth factor and that a gel-forming material such as agar or agarose is also in the composition.

It would have been obvious to one of ordinary skill in the art to add agar or agarose to the composition since Eckert and Starkweather both teach that agar and agarose are both well known to be used as gels and applied to enzymes such as alkaline phosphatase routinely for assays and the like. To use a gel-forming material in a composition for wound healing would be also be obvious since one would want a gel forming material to aid in healing the wound and help comfort the patient and as a medium to contain the enzyme in for delivery to the wound site.

It would have been obvious to one of ordinary skill in the art to use IGF-I as the specific growth factor since it would have been merely a choice of the artisan in an effort to optimize the results to use IGF-I. IGF-I, insulin and the like are well known growth factors (see Atruis), to use them is simply a choice by the artisan.

The adjustment of particular conventional working conditions (e.g., determining result effective amounts of the enzyme, especially within the broad ranges instantly

claimed) is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

Accordingly, this type of modification would have been well within the purview of the skilled artisan and no more than an effort to optimize results.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 703-308-4230. The examiner can normally be reached on Monday thru Friday: 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on 703-308-4743. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-0294 for regular communications and 703-308-0294 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.



Michael V. Meller
Examiner
Art Unit 1651

MVM
April 19, 2002